



REGULATORY IMPACT STATEMENT

FOR

**THE FILMS AND STAGE PLAYS (FILM CENSORSHIP) (AMENDMENT)
REGULATIONS, 2023**

JUNE 2023

**This Regulatory Impact Statement has been prepared by the Ministry of Youth Affairs, the
Arts and Sports pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of
2013)**

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CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 Introduction

The Films and Stage Plays Act in Section 35 provides that the Minister may make Regulations for the effective implementation of any functions conferred to the Kenya Film Classification Board (KFCB).

In the exercise of the above powers, the Ministry of Youth Affairs, the Arts and Sports has drafted the Films and Stage Plays (Film Censorship) Regulations 2023. This is a statutory instrument which seeks to prescribe the form and manner of licensing film distributors and exhibitors within the Kenyan jurisdiction.

The Ministry now therefore prepares this Regulatory Impact Statement in partial fulfilment of the Statutory Instruments Act.

1.2 Requirements of the Statutory Instruments Act

The Statutory Instruments Act, No. 23 of 2013 is the legal framework governing the conduct of Regulatory Impact Statements within the jurisdiction of Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of a community, the statutory-making entity shall, prior to making the instrument, prepare a regulatory impact statement about the instrument.

Additionally, the Act sets out certain key elements that should be contained in the Regulatory Impact Statement as follows:

- a) A statement of the objectives of the proposed legislation and the reasons thereof;
- b) A statement explaining the effect of the proposed legislation;
- c) A statement of other practicable means of achieving those objectives, including other regulatory and non-regulatory options;
- d) An assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- e) The reasons why other means are not appropriate.

Further, Section 5 of the Act requires that a regulation-making entity conducts public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.3 What is a Regulatory Impact Statement

A Regulatory Impact Statement is a systematic policy tool used to examine and measure the likely benefits, costs and effects of new or existing statutory instruments. The Statement is an analytical report with a view to aiding decision makers. As an aid to decision making, a Regulatory Impact Statement essentially comprises an evaluation of possible alternative regulatory and non-regulatory approaches with the overall purpose of ensuring that the final selected regulatory approach achieves the intended aim of a greater public benefit.

Therefore, the structure of a Regulatory Impact Statement should contain the following components:

- a) Title of the proposal;
- b) Objective and intended effect of the regulatory policy;
- c) Evaluation of the policy problem;
- d) Consideration of alternative options;
- e) Assessment of all their impacts distribution;
- f) Results of public consultation;
- g) Compliance strategies; and
- h) Processes for monitoring and evaluation.

The Statement is conducted before a new statutory instrument is introduced to provide a detailed and systemic appraisal of the potential impact of the instrument with a view to ascertain the likelihood of achieving the desired objectives.

From a collective societal perspective, the Statement should confirm whether or not a proposed statutory instrument's benefits outweigh the costs. Therefore, the objective of the Statement is to improve the understanding of the real-world impact of legislative action, which include the cost-benefit analysis, integration of multiple policy objectives, improving transparency and consultation as well as enhancing accountability of the government.

CHAPTER 2: OBJECTS OF THE FILMS AND STAGE PLAYS (FILM CENSORSHIP) (AMENDMENT) REGULATIONS, 2023

The general objective of these Regulations is to give effect to Section 12, 13,14, 16 17 and 29 of the Films and Stage Plays Act in accordance with Section 35 of the Act.

Specifically, the Regulations intend to:

1. Amend the provisions on the classification rating to align to the Act;
2. Amend the fee schedule prescribed to harmonize with the existing regulatory environment
3. Make a distinction in the fee schedule between local and foreign film content; and
4. Amend the Certificate of Approval for a film and poster to align it with the Act and the Regulations made thereto.

CHAPTER 3: BACKGROUND AND CONTEXT

3.1 History of the Film Regulation in Kenya

The Films and Stage Plays Act was enacted in 1962 as the Films and Stage Plays Ordinance No. 34 of 1962. The Act came into force retrospectively in 1963 by dint of a provision in Statute Law Misc. Amendment Act No. 21 of 1966 which set the commencement date of the Ordinance, now Act, as 1st October 1963.

The Act has gone through a number of piecemeal amendments and the current version of the Act is as revised in 2012 under the Revision of Laws Cap 2 Laws of Kenya, L.N. 472/1963.

In exercise of the powers conferred on him by the Kenya Order-in-Council 1963, the then Governor Malcolm McDonald made certain regulations the effect of which was to amend various provisions of the 1962 Ordinance.

The most notable was the enactment of a new section 24 of the Ordinance which gave the Minister the powers to appoint, by notice in the gazette, the city Council of Nairobi as the licensing authority for the Nairobi area. In respect of the Regions, it was the responsibility of the Regional Assembly, by notice in the Regional Gazette, to appoint a local authority or a Regional Government Agent as the licensing authority for a specified area in the region.

This was an aspect of the decentralization of the licensing function. Section 29 of the regulations provided for a right of appeal to the Minister.

The Act has undergone numerous amendments over the years (Statute Law Misc. Amendment Act No. 21 of 1966, Statute Law Misc. Amendment Act No. 38 of 1968, Statute Law Misc. Amendment Act No. 13 of 1972, Statute Law Misc. Amendment Act No. 22 of 1987).

The famous and notable amendment was the Statute Law Misc. Amendment Act No. 10 of 1997 which repealed all provisions relating to stage plays. The same amendment further repealed section 25 which provided for licensing of cinema theatres and replaced the same with a re-worded section 25. This section was later repealed in the Statute Law Misc. Amendment Act No. 5 of 2007 together with sections 24, 26-28, 33 among other provisions of the Act.

The Statute Law Misc. Amendment Act No. 6 of 2009 created the Kenya Film Classification Board as presently constituted (Part III of the Act).

3.2 Existing Scenario

Pursuant to Section 24 of the Interpretations and General Provisions Act, Cap 2, Regulations under the Films and Stage Plays Act remain in force as long as they are not inconsistent with the repealing Act; until revoked or repealed by subsidiary legislation under provisions of the repealing Act.

3.3 Paradigm Shift

The Films and Stage Plays (Film Censorship) Regulations, 2023 seek to align film classification to the current constitutional and statutory dispensation.

CHAPTER 4: EVALUATION OF THE PROBLEM

The Executive Order on the Organization of Government in the Republic of Kenya dated 12th October 2022 (superseded by Executive Number 1 of 2023 dated 6th January 2023) placed, among others, the Kenya Film Classification Board under the State Department of Youth Affairs and the Arts in the Ministry of Youth Affairs, the Arts and Sports. To this end, the Ministry identified various gaps in the execution of the Board's mandate with respect to the film classification.

4.1 Identified Challenges

a) Technological Advancements

The advent of technology has not only led to the emergence of new forms of Film exhibition and distribution but has also spurred growth in film production. This has seen an increase in local production thereby necessitating the need to provide a clear distinction of foreign and local content since the current regulations had not made that distinction.

b) Classification Rating

The classification ratings are internationally accepted standards which are represented by iconography which prescribes the respective age of the target audience of a film. Regulation 11(3) prescribes four classification ratings for films that have been approved. These ratings are inconsistent with the internationally recognized ratings.

CHAPTER 5: LEGAL FRAMEWORK FOR THE PROPOSED FILMS AND STAGE PLAYS (FILM CENSORSHIP) (AMENDMENTS) REGULATIONS, 2023

An evaluation of the legal and policy frameworks related to prescribing the procedure for the application for the certificate of approval for a film is intended to answer the question whether there is a legal basis for developing these proposed Regulations. It is also intended to bring out the context and legal environment within which the proposed Regulations is being developed. Regulatory processes should be structured so that all regulatory decisions rigorously respect the principles of ‘rule of law’ that is, responsibility should be explicit for ensuring that all regulations are authorized by higher-level regulations and are consistent with the supreme law and treaty obligations. In addition, they should complement other legal requirements and ensure statutory harmony of the entire statute book.

5.1 The Constitution of Kenya, 2010

5.1.1 Application of National Values and Principles of Governance

Article 10 binds State and Public organs and persons to apply the national values and principles of governance in the enactment, application and interpretation of any law. These, inter alia, include good governance, integrity, participation of the people, transparency and accountability.

5.1.2 Right to information

Article 35 provides that the State is obligated to publish and publicize any important information affecting the nation.

Article 46 further provides that consumers have the right to the information necessary for them to gain full benefits from goods and services.

Article 47 provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

Article 94(6) provides that an Act Parliament or legislation made by a state or public entity shall specify the purpose, objectives and limits for which authority has been granted, the nature and scope of the law and the principles and standards applicable the law made.

CHAPTER 6: PUBLIC CONSULTATIONS

An evaluation of the public consultation process is necessary to ascertain whether all interested parties had the opportunity to present their views. Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses, interest groups and other government ministries, departments and agencies.

6.1 Legal Requirements relating to Public Participation and Consultation

It is a constitutional requirement to carry out public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on Article 1 of the Constitution on the sovereignty principle which vests all sovereign power to the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

Article 174 gives powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development.

The values and principles of public service require the involvement of the people in the process of policy making through provision of timely and accurate information to the public.

The Statutory Instruments Act obligates a regulation making authority to carry out appropriate consultations before making statutory instruments (Regulations) where the proposed regulations are likely to have a direct, or a substantial indirect effect on business or restrict competition. It further provides that in determining whether any consultation that was undertaken, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation:

- a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Act also states that the persons to be consulted should be notified either directly or indirectly or by advertisement through representative organizations. They shall also be invited to make submissions by a specified date, which should not be less than fourteen (14) days or be invited to participate in public hearings concerning the proposed instrument.

6.2 Approach and Methodology

The Ministry and the Board undertook various public consultations exercises between 28th March and 31st May 2023. The approach used included:

1. A Public Notice on the KFCB website
2. Public Notice on the Standard Newspaper, 28th March, 2023
3. Public Fora in different regions of the country

The Notices specified a period of 21 days within which stakeholders and members of the public were invited to make their submissions. This period was extended for a further seven (7) days to ensure comprehensive public participation. There were a total of thirty-four (34) submissions made with respect to the Regulations. Such submissions were made by the following entities:

1. Creative Economy Working Group
2. Netflix
3. Multichoice Limited
4. Royal Media Services
5. Centre for Law in Information Technology
6. American Chamber of Commerce
7. Safaricom PLC
8. Kenya Broadcasting Corporation
9. Crimson Multimedia Ltd
10. Red Earth Fixers Ltd
11. Take Nine
12. Silas B. Owiti
13. Yakwetu Foundation
14. Coulson Harney
15. Lakeside Thespians
16. Finix Filming Company
17. Mara Moja Productions

Further, stakeholders were invited, through letter and email, to submit their written submissions within the specified time. Lastly, stakeholders were invited to attend stakeholder consultation meetings between 2nd and 31st May 2023 in different regions. The table below indicates the stakeholders who attended the various stakeholder consultation fora.

Table 1: List of Stakeholders

NO.	STAKEHOLDER	NO. OF PARTICIPANTS	DATE AND VENUE	TIME
Cluster 1	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups from Mombasa Kwale, Taita Taveta, Kilifi	25	2 nd May 2023 at the Kenya School of Government in Mombasa	9.00am-4.00pm

Cluster 2	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups from Kisumu, Siaya, Homa Bay and Migori	33	5 th May at the Kisumu Hotel, Kisumu	9.00am-4.00pm
Cluster 3	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups	31	9 th May 2023 at the Kenya School of Government, Embu	9.00am-4.00pm
Cluster 4	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups	30	30 th and 31 st May 2023 at the College of Insurance	9.00am-4.00pm

The consultative forums were engaging with stakeholders making submissions with regard to the Censorship Regulations, whose comments have been incorporated into the same.

CHAPTER 7: OVERVIEW OF THE PROPOSED FILMS AND STAGE PLAYS (FILM CENSORSHIP) (AMENDMENT) REGULATIONS, 2023

The general objective of these Regulations is to give effect to Part III of the Films and Stage Plays Act with respect to classification of films through amendment of the Regulations in accordance with Section 35 of the Act. The specific objectives are to provide the procedures for the certification of applicable film entities in Kenya.

Specifically, the Regulations intend to:

1. Amend the provisions on the classification rating to align to the Act;
2. Amend the fee schedule prescribed to harmonize with the existing regulatory environment;
3. Make a distinction in the fee schedule between local and foreign film content; and
4. Amend the Certificate of Approval for a film and poster to align it with the Act and the Regulations made thereto.

CHAPTER 8: COST- BENEFIT ANALYSIS

This section seeks to assess the changes proposed by the Regulations in terms of their costs and benefits to justify the proposals pursuant to Section 7(d) of the Statutory Instruments Act.

8.1 Benefits of the Regulations

The approval of the Regulations is deemed to have the following accruing benefits:

1. Enhanced operationalization of the provisions of the Act with respect to classification of film;
2. Enhanced compliance by industry players;
3. Increased support for the industry players in a burgeoning sector;
4. Harmonization with international best practices; and
5. Improved ease of doing business.

8.2 Financial Costs

Implementation of the proposed set of Regulations are estimated to cost Kshs. 14,443,793.00 annually. This cost will be borne by the Board to among other things, enhance the capacity of the Film content classification staff and external examiners as well as configuration of the Technical Regulatory Management system- Classification module. Further, the costs will cater for stakeholder and public awareness coupled with continuous monitoring and inspection in order to enhance compliance with these regulations.

These Regulations have provided a reprieve to the local industry by differentiating local to foreign films by reducing the cost of classification by 15% for local films. Further, the fees prescribed by these Regulations were based on the principle of risk and impact that the content may have on the consumer.

CHAPTER 9: CONSIDERATION OF ALTERNATIVES TO THE REGULATIONS

The Statutory Instruments Act requires a regulator to carry out an informal evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulations should be the last resort in realizing policy objectives. The options considered under this part are: maintenance of the status quo, administrative measures and developing the proposed Films and Stage Plays (Film Censorship) Regulations, 2023.

9.1 Option 1: Maintenance of the Status-Quo

The Films and Stage Plays (Film Censorship) (Amendment) Regulations, 2023 are responsive to the current legislative requirements. By maintaining the status quo, the legal requirements under Regulation 11(3) as read with Section 17 of the Films and Stage Plays Act will not be fulfilled.

Further, the classification rating symbol is the only way to communicate the content of a film to the audience therefore clarity and what is internationally accepted as classification rating ought to be used without the risk of causing confusion. Maintaining the status quo for instance using the symbol U for general exhibition has the possibility of causing confusion to the audience as opposed to using GE which is common to the public.

9.2 Option 2: Administrative Measures

Administrative measures involve issuance of directives and circulars. This is a non-regulatory measure which if applied, will depend on the goodwill of public officers to implement the provisions of the Films and Stage Plays Act regarding certification of self-classification entities. Administrative measures are subjective, non-binding and may be challenged in a court of competent jurisdiction. In addition, some administrative measures issued in the past have not achieved the desired objectives.

9.3 Option 3: Formulation of the Regulations

The Films and Stage Plays (Film Censorship) (Amendment) Regulations, 2023 will yield the following benefits: enhanced operationalization of the provisions of the Act with respect to classification of film; enhanced compliance by industry players; increased support for the industry players in a burgeoning sector; harmonization with international best practices; and improved ease of doing business.

The assessment of the cost and benefits in Chapter 8, indicates that the benefits of formulating the regulations far outweigh the costs, therefore, option three (3) was selected as the preferred option.

9.4 Impact Analysis of the Options

An impact analysis of the options justifies the purpose of formulating the regulations and the challenges that the regulations will address. It further justifies the selection of option three on

formulating the proposed Films and Stage Plays (Film Censorship) (Amendment) Regulations, 2023 by evaluating the socio-economic, environmental and legal impact of the regulations as shown in the table below:

Table 2: Impact Analysis of the three options

Impact on Sectors	Option One: Maintaining the Status Quo	Option Two: Administrative Measures	Option Three: Formulating the proposed Films and Stage Plays (Film Censorship) (Amendment) Regulations, 2023
	This entails doing nothing and retaining the current state of affairs	This entails putting in place administrative measures to ensure implementation of the provisions of licensing film distributors and exhibitors under the Films and Stage Plays Act.	This entails: <ul style="list-style-type: none"> • amending the classification rating prescribed to align to the Act and international best practices; • Making a distinction in the fee schedule between local and foreign film content; • Amending the Certificate of Approval for a film and poster to align it with the Act and the Regulations made thereto.
Impact on public sector	The public sector will be accused of inaction for failure to align its Regulations with the Act and making amendments to the same where necessary in order to ensure that the operationalization of the Act is in line with the sector within which the Board regulates.	It is unlikely that administrative processes without the force of the law will effectively address emerging realities in the classification of film.	<ul style="list-style-type: none"> • The regulations ensure expeditious, efficient, lawful, reasonable and procedurally fair administration of actions by the government with respect to the classification of film.
Impact on the private sector	The actions of the private sector will not be guided due to the lack of consistency between the Act and the Regulations as regards the classification rating. The industry (local film) will not enjoy the benefits of a reduced prescribed fee.	Administrative measures offer short term relief to addressing the issues raised with respect to classification of films. Administrative measures cannot prescribe reduced fees that are provided for in legislation.	<ul style="list-style-type: none"> • The regulations will provide guidelines for classification of film and the ratings made thereto. business. • The industry (local film) will enjoy the benefits of a reduced prescribed fee.

Socio-economic impact	There will be no framework to ensure that socio-economic rights as provided for under Chapter 4 of the Constitution are upheld.	Administrative measures do not provide for a structure that ensures accountability hence socio-economic rights under Chapter 4 of the Constitution may not be met.	<ul style="list-style-type: none"> • The Regulations support socio-economic rights provided for under Chapter 4 of the Constitution including the consumer rights and right to information. • The proposed regulatory instruments will facilitate the full enjoyment of consumer rights, the right to information as well as rights to fair administrative action. • The proposed regulatory instruments neither impose, waive nor vary any tax or fees imposed under any law in Kenya. Indeed, the instrument seeks to reduce film classification fees for local film content thus encouraging growth in the sector.
Impact on existing legal frameworks	The legal requirement under Part III as read with Section 35 of the Films and Stage Plays Act will not be met.	Administrative measures without the force of the law may be challenged, leading to slow/ halted service delivery.	<ul style="list-style-type: none"> • Fulfills the legal requirement under Part III as read with Section 35 of the Films and Stage Plays Act with respect to film classification. • The proposed Regulations do not impose any adverse legal requirement under the existing framework, therefore do not conflict or have any negative effect on any such existing legislation.
Impact on environment	The proposed Regulations have no effect on the environment.	The proposed Regulations have no effect on the environment.	The proposed Regulations have no effect on the environment.

CHAPTER 10: COMPLIANCE AND IMPLEMENTATION

It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect and design responsive implementation strategies that make the best use of them. The implementation and enforcement of these regulations will be undertaken through the existing institutional framework at national level by the Board as conferred to it under the Films and Stage Plays Act and the Ministry of Youth Affairs, the Arts and Sports whose role is to provide policy guidance and coordination of the film sector with respect to film classification.

CHAPTER 11: CONCLUSION

Based on the analysis in this report, the Films and Stage Plays (Film Censorship) (Amendment) Regulations, 2023 are necessary. The regulations offer socio-economic and legal benefits which include ease of doing business and improved service delivery, which far outweigh the costs of the Regulations. The regulations also provide a framework for ensuring that the people of Kenya enjoy the socio-economic rights enshrined in the Constitution.

11.1 Recommendation

In light of the above conclusion, it is recommended that the Films and Stage Plays (Film Censorship) (Amendment) Regulations, 2023 be adopted.

ANNEXURES

1. Regulations

LEGAL NOTICE.....

THE FILMS AND STAGE PLAYS ACT (Cap. 222)

THE FILMS AND STAGE PLAYS (FILM CENSORSHIP) (AMENDMENT) REGULATIONS, 2023

IN EXERCISE of the powers conferred by section 35 (1) of the Films and Stage Plays Act, the Cabinet Secretary makes the following Regulations—

THE FILMS AND STAGE PLAYS (FILM CENSORSHIP) (AMENDMENT) REGULATIONS, 2023

Citation.

1. These Regulations may be cited as the Films and Stage Plays (Film Censorship) (Amendment) Regulations, 2023.

Amendment of
Reg. 11 of L.N.
No. 349 of
1968.

2. The Films and Stage Plays (Film Censorship) Regulations, 1968 hereinafter referred to as the principal Regulations is amended in Regulation 11--

(a) by deleting sub-regulation (1) and substituting therefor the following new sub-regulation—

(1) A certificate of approval issued under Section 16(5) of the Act shall--

(a) in the case of a filming license, be in Form 1 as provided in the First Schedule of these Regulations;

(b) in the case of a film poster, be in Form 2 as provided in the First Schedule of these Regulations, and

(c) be signed by the Chief Executive Officer on behalf of the Board.

(b) by deleting sub-regulation (3) and substituting therefor the following new sub-regulation—

(3) (a) Where the film is approved, the Board shall cause to be displayed classification labels which shall be—

(i) green label with the letters “GE” in a triangle for films approved for General Exhibition;

(ii) yellow labels with the letters “PG-10” in a triangle for films approved as unsuitable for children under the age of ten years;

(iii) orange labels with the letters “PG-13” in a triangle for films approved as unsuitable for children under the age of thirteen year;

(iv) blue labels with the number “16” in a circle for films approved as unsuitable for children under the age of sixteen years; and

(v) red labels with the number “18” in a circle for films approved as unsuitable for children under age of eighteen years and for adults only.

(b) The inscription on the labels under paragraphs (i), (iii), (iv) and (v) shall be in white and the inscriptions on the labels under paragraph (ii) shall be in black.

Amendment of First Schedule of LN. No. 349 of 1968.

3. The principal Regulations are amended by deleting the First Schedule and substituting therefor the following new Schedule—

FIRST SCHEDULE

[Regulation 11(1)]

FORM 1

CERTIFICATE OF APPROVAL OF FILM

Date of Issue.....

Certificate Number.....

In accordance with Section 16(5) of the Films and Stage Plays Act, the Kenya Film Classification Board hereby certifies that it has examined the film titled and has approved it for exhibition to the public as:

GE	GENERAL EXHIBITION
PG-10	PARENTAL GUIDANCE RECOMMENDED FOR CHILDREN UNDER 10 YEARS OLD
PG-13	PARENTAL GUIDANCE RECOMMENDED FOR CHILDREN UNDER 13 YEARS OLD

	PG-16	NOT SUITABLE FOR CHILDREN UNDER 16 YEARS OLD
	ADULTS ONLY	ADULTS ONLY

with the following thematic elements.....

This Certificate is hereby granted to

for exhibition in

.....

Chief Executive Officer

FIRST SCHEDULE

[Regulation 11(1)]

FORM 2

APPROVAL OF POSTER OR DESCRIPTION OF POSTER

Date of Issue.....

Certificate No.....

In accordance with section 16(5) of the Films and Stage Plays Act, the Kenya Film Classification Board hereby certifies that it has examined the poster (or) the description of the poster relating to and has been —

Approved it for public display.

Non Approved for public display.

.....

Chief Executive Officer

Amendment of Second Schedule of L.N. No. 349 of 1968. **4.** The principal Regulations are amended by deleting the Second Schedule and substituting therefor the following new Schedule--

SECOND SCHEDULE
[Regulation 14]
CLASSIFICATION FEES

Band	Class of Film	Classification Fee	
		Local Film	Foreign Film
A	Film	85 per minute	100 per minute
B	Trailer	1,000	1,000
C	Poster	1,000	1,000
D	Commercial	5,000	10,000

Made on theday of,2023

ABABU NAMWAMBA, E.G.H
*Cabinet Secretary for Youth Affairs,
the Arts and Sports*

2. Stakeholder Report



**REPORT ON THE
COLLATION OF
STAKEHOLDERS
SUBMISSIONS ON
REGULATIONS AND
GUIDELINES**

JUNE 2023

**STATE DEPARTMENT OF YOUTH AFFAIRS AND THE ARTS
MINISTRY OF YOUTH AFFAIRS, THE ARTS AND SPORTS**

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PART 1: INTRODUCTION

Kenya Film Classification Board (KFCB) is a State Corporation established under the Films and Stage Plays Act Cap 222 Laws of Kenya (the Act). The functions of the Board are to regulate the creation, broadcasting, possession, distribution and exhibition of films and to license and issue certificate to distributors and exhibitors of films.

VISION

To be a world class film and broadcast film regulator

MISSION

To safeguard National values and norms through efficient and effective film regulatory services

CORE VALUES

- i. Professionalism
- ii. Integrity
- iii. Teamwork
- iv. Accountability
- v. Innovation

PART 2: FILMS AND STAGE PLAYS REGULATIONS AND GUIDELINES

The Ministry of Youth Affairs, the Arts and Sports is vested with the responsibility of developing the film industry through policy and legislative interventions. To this end, the Ministry is conferred with the responsibility of developing Regulations under Section 35 of the Films and Stage Plays Act, Cap 222, Laws of Kenya. The Kenya Film Classification Board is established under the Act to regulate the local film sector with a view to creating an enabling regulatory environment and to protect children from exposure to inappropriate content.

To cope with the rapid evolution of technology and the emergence of new services, the Ministry of Youth Affairs, the Arts and Sports is reviewing the Regulations listed in **Table 1** below with a view to aligning the legal and regulatory framework with developments in the industry as well as international best practices.

Table 1: Regulations and Guidelines

No.	Proposed regulations	Summary
1.	Film and Stage Plays (Film Classification) Guidelines, 2023	These Guidelines have been developed in accordance with Section 15(2) (b) of the Films and Stage Plays Act that makes provision for prescribing procedure to be used in the classification of all classes of films. These Guidelines prescribed the guiding principles, thematic areas, as well as corresponding age ratings and advisories.
2.	Films and Stage Plays (Self-Classification) Regulations, 2023	These Regulations prescribe the procedure for the identification and co-option of film distributors and exhibitors to classify films on behalf of the Board. The proposed fees in the Regulations have been made in consideration of the volumes of audio-visual content made accessible due to technological advancements and the introduction of new forms of content distribution and exhibition such as the over-the-top service platforms. The proposed fees are accommodating to film exhibitors and distributors as evidenced in the banding as opposed to the current levying of fees.
3.	Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023	These Regulations have been developed in accordance with Section 35 to prescribe the procedure in which the Board licenses film distributors and exhibitors. The proposed fees to these Regulations are developed in recognition of the diverse forms of film distribution and exhibition across the country.
4.	Films and Stage Plays (Film	The core mandate of the Board is the classification of film. The Board took cognizance of the clamor by the public to

	Censorship) Regulations, 2023	reduce the cost of film classification. As a result, the proposed fees have been distinguished between local and foreign audio-visual content with the Board proposing a reduction of rate of fifteen (15) percent for local audio-visual content.
5.	Films and Stage Plays (Cinematograph Films) (Forms and Fees), Regulations, 2023	The Regulations prescribe the procedure for the application for filming licenses, registration of film agents, and the fees thereto. The fee schedule proposed have distinguished between foreign and local fees so as to spur growth for the local film industry. To this end, local film maker fees have been proposed to reduce the same by fifteen (15) percent of the current fees. Accordingly, foreign fees have been retained as per the current schedule. The fee schedules have been banded with a view to ensuring reasonability with respect to filming.

2.1 RATIONALE FOR REVIEW FOR REVIEW AND DEVELOPMENT

1. Film and Stage Plays (Film Classification) Guidelines, 2023

According to Section 15(2) b of the Films and Stage Plays Act, The Board may from time to time prescribe guidelines to be applied in the classification of films. Technological advancements have led to changes in lifestyle, public expectations and concerns thus necessitating the Board to consider reviewing the classification guidelines to include emerging trends in the society.

2. Films and Stage Plays (Self-Classification) Regulations, 2023

The current classification fee is based on the running time of a film. However, due to the volumes of content on VOD, OTTs and Broadcast services, charging classification fees based on running time may be exorbitant. Consequently, the Board proposes to levy classification fees per title. These levies are banded to accommodate the different volumes of content on different platforms.

The Board has distinguished the classification fees for VOD, OTTs from the broadcasters due to the nature of former that render them to: contain large volumes of content; be accessible via the internet and the consumer's convenience to watch content of their choice at their preferred time and place.

3. Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023

The Act imposes fees for three categories of film distributors and exhibitors. These include video show & video vendors, video libraries and cinema theatres. The fees were created specifically for the traditional chain distribution and exhibition of film.

Technological advancement has changed and expanded the modes of film distribution and exhibition occasioning the need to review the current regulatory model to incorporate new technologies.

The review of the fees is informed by the following:

- i. The recognition of the diverse forms of the distribution and exhibition of audio-visual content.
- ii. The need to adjust the fees to the current market rates.
- iii. The need to apportion the requisite fees to the different forms of film /content exhibition and distribution based on their potential to expose users to harm and the negative impact they have on content consumers.

4. Films and Stage Plays (Film Censorship) Regulations, 2023

a) Film

The Board proposes retention of the current classification fees for the foreign content and a 15% reduction on classification fees for the local content to incentivize the industry players, grow the industry and encourage local content creation, distribution and consumption.

b) Posters, Trailers and Commercials

The Board proposes retention of the classification fees levied on posters and trailers as per the current fees schedule and an increase on the classification fees from Kshs 1000 to Kshs 5,000 and Kshs. 10,000 for local and foreign commercials respectively. The increase is based on the principle that commercials are made to persuade and influence behavior through the use of targeted visual consistency within a considerably short period. The frequency of airing such commercials has a higher potential for harm.

5. Films and Stage Plays (Cinematograph Films) (Forms and Fees), Regulations, 2023

a) Fees for Foreign Filmmakers

Based on benchmark studies conducted in other jurisdictions (Annex 1), the current filming fees were found to be favorable across Africa and therefore shall be retained as they are.

b) Fees for Local Filmmakers

Local film industry stakeholders have indicated that the current filming fees are prohibitive thus discouraging many from pursuing filmmaking careers while compelling others to engage in illegal filming activities. To address this concern, the Board recommends a reduction of the current fees by 15% for the local filmmakers.

c) Banding of Fees

Banding of fees was done to ensure filmmakers with projects requiring few filming days are charged reasonable fees while those with projects taking long periods of time enjoy benefits of the economies of scale.

d) Daily Filming Fees

All filming fees are covered in the bands. However, in case filming is not completed within the licensed period in the band, the daily filming fees are an option for extension. The fees shall only be applicable to extension of valid filming Licence.

e) Filming Fees Increase for Commercials/Advertisements

The increase of the fees is necessitated by the high economic value of the advertisements and the frequency with which they are aired/exhibited thus increasing their potential to cause harm.

2.2 PUBLIC PARTICIPATION

2.2.1 PUBLIC NOTICE(Annex 1)

In accordance with the Constitution, 2010, the Board published the draft Regulations and Guidelines and invited members of the public to provide written comments, recommendations or justification (s) thereof from the **28th March 2023** to **28th April 2023**.

All written submissions were forwarded through regulations@kfcg.go.ke or the Boards postal address.

At the end of the Notice period, the Board had received a total number of ____ submissions. The submissions and the responses thereto, are attached herein as Annex I.

2.2.2 STAKEHOLDER ENGAGEMENT FORUMS

In a bid to enhance public participation, the Board five stakeholder engagement forums across the country. (*Pictorials Annex 3*) The forums took place as follows:

- i. Mombasa: 2nd May 2023 at the Kenya School of Government;
- ii. Kisumu on 5th May 2023 at the Kisumu Hotel;
- iii. Embu on 9th May 2023 at the Kenya School of Government; and
- iv. Nairobi on 30th and 31st May at the College of Insurance.

The submissions and the responses thereto, are attached herein as Annex I.

ANNEX I: PUBLIC NOTICE



INVITATION FOR PUBLIC PARTICIPATION ON THE FILMS AND STAGE PLAYS REGULATIONS AND GUIDELINES

The Ministry of Youth Affairs, the Arts and Sports is vested with the responsibility of developing the film industry through policy and legislative interventions. To this end, the Ministry is conferred with the responsibility of developing Regulations under Section 35 of the *Films and Stage Plays Act, Cap 222, Laws of Kenya*.

The Kenya Film Classification Board is established under the Act to regulate the local film sector with a view to creating an enabling regulatory environment and to protect children from exposure to inappropriate content.

To cope with the rapid evolution of technology and the emergence of new services, the Ministry of Youth Affairs, the Arts and Sports is reviewing the Regulations below with a view to aligning the legal and regulatory framework with developments in the industry as well as international best practices.

Accordingly, foreign fees have been retained as per the current schedule. The fee schedules have been banded with a view to ensuring reasonability with respect to filming.

No.	Proposed regulations	Summary
1.	Film and Stage Plays (Film Classification) Guidelines, 2023	These Guidelines have been developed in accordance with Section 15(2) (b) of the Films and Stage Plays Act that makes provision for prescribing procedure to be used in the classification of all classes of films. These Guidelines prescribed the guiding principles, thematic areas, as well as corresponding age ratings and advisories.
2.	Films and Stage Plays (Self-Classification) Regulations, 2023	These Regulations prescribe the procedure for the identification and co-option of film distributors and exhibitors to classify films on behalf of the

		Board. The proposed fees in the Regulations have been made in consideration of the volumes of audio-visual content made accessible due to technological advancements and the introduction of new forms of content distribution and exhibition such as the over-the-top service platforms. The proposed fees are accommodating to film exhibitors and distributors as evidenced in the banding as opposed to the current levying of fees.
3.	Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023	These Regulations have been developed in accordance with Section 35 to prescribe the procedure in which the Board licenses film distributors and exhibitors. The proposed fees to these Regulations are developed in recognition of the diverse forms of film distribution and exhibition across the country.
4.	Films and Stage Plays (Film Censorship) Regulations, 2023	The core mandate of the Board is the classification of film. The Board took cognizance of the clamor by the public to reduce the cost of film classification. As a result, the proposed fees have been distinguished between local and foreign audio-visual content with the Board proposing a reduction of rate of fifteen (15) percent for local audio-visual content.
5.	Films and Stage Plays (Cinematograph Films) (Forms and Fees), Regulations, 2023	The Regulations prescribe the procedure for the application for filming licenses, registration of film agents, and the fees thereto. The fee schedule proposed have distinguished between foreign and local fees so as to spur growth for the local film industry. To this end, local film maker fees have been proposed to reduce the same by fifteen (15) percent of the current fees. Accordingly, foreign fees have been retained as per the current schedule. The fee schedules have been banded with a view to ensuring reasonability with respect to filming.

The aforesaid regulatory and legal instruments can be accessed at <https://kfcg.go.ke/~kfcgok/policies>

In accordance with the Constitution, 2010, this is to hereby invite members of the public to provide written comments, recommendations or justification (s) thereof on the draft Regulations and Guidelines.

All written submissions should be forwarded through regulations@kfcg.go.ke or the address provided below, not later than **Friday, 21st April 2023**.

The Chief Executive Officer

Kenya Film Classification Board

P.O. Box 44226- 00100 Nairobi Tel:

020 225 0600

Mobile: 0711 222 204/0773 753 355

Website: www.kfcg.go.ke

28th March 2023

Hon. Ababu Namwamba, EGH

Cabinet Secretary

ANNEX II: STAKEHOLDER SUBMISSIONS MATRIX

No.	PROVISION/ CLAUSE	PROPOSAL	KFCB RECOMMENDATION	REGION
1	Section 3	-Adults Only – classify as strictly 18+ for sensitive content of extreme language, nudity, religious sentiments or LGBTQ+ content	This is not adopted- Restriction of films is not based on age. The parameters of restriction are with regard to content that should not be distributed and exhibited within the Kenyan Jurisdiction. These parameters are provided for in the classifications guidelines as well as any other applicable law.	NAIROBI
		-A general term ‘unsuitable’ should mean that the Parents or Adult Guardians can determine if suitable for their children/minors with the appropriate classification		
	Section 3	Highlight the classification provision for films that release theatrically which are classified physically before release while OTT may release the same subsequently.	Films already classified by the Board will have the same rating assigned on OTT platforms with respect Self-Classification.	
2	New	Proposal to introduce definition of Label as a symbol printed on a film poster, affixed onto a physical film medium and or visual imagery on a film being exhibited.	Adopt changes to the Film Censorship and Film Distribution and Exhibition Regulations.	NAIROBI
	11(1) Certificate of approval	Append the following at the bottom of Form 1: “ Chief Executive Officer —	This proposal is adopted.	
	New - Definition/ Exclusion	Cinematographer: A person who produces movies, television shows, and high-budget commercials. Their productions may or not be commercial but are distinguishable by their high professional, expertise and or resources committed to the production.	This proposal is not adopted – the definition suggested is ambiguous	

New - Definition/ Exclusion	Videographer: A person filming the world around them without getting much consideration in the location, art direction, or overall feeling and or control of a scene. For example, videographers shoot events such as interviews, sports, conferences, Except amateur video and other User Generated Content videos from classification scope weddings, vlogs and other personal videos	This proposal is not adopted – the term has not been used anywhere in the regulation.	
New - Definition/ Exclusion	Aesthetic Neutrality: determination of what classifiable elements disregards content’s popularity, quality, value, audience reach, subscribers, views, hits, analytics, and other such indicators	This proposal is not adopted - the term has not been used anywhere in the regulation.	
Definition	Consider including other relevant definitions from the Programming Code. A whole list is available from the Programming Code	This proposal is not adopted – definitions provided by other legislations still apply. Request is ambiguous	
Insert Paragraph 5	An online intermediary (a).shall not be deemed to be the owner, creator, maker, distributor, broadcaster, exhibitor or possessor of such a film and does not have a general obligation to monitor the information which is transmitted or stored, hosted, routed, cached, searched and retrieved on its platform; and (b)does not have a general obligation to monitor the content on the platform or to actively seek facts or circumstances indicating illegal activity.	This proposal is not adopted – Any audiovisual content made for public exhibition is subject to the provisions of the film and stage plays act.	

3	Title	It is proposed that the words “censor” and ‘censorship” be completely removed from all subsidiary regulations. Regulations be revised from a classification perspective rather than from a censorship view	The proposal is welcome. However it is important to note that these are ammendements to the existing regulations and not a repeal of the same. Therefore the name cannot change. The word censorship does not appear in the regulation.	NAIROBI
4	Regulation 3	11 (3) (a) Where the film is approved, the Board shall cause to be displayed classification labels which shall be	Adopt change.	NAIROBI
	Schedule 2	Classification Fee (KES/KSHS.)	Adopt change.	
	Schedule 2	Charge per film as opposed to per minute	This proposal is not adopted – The suggested fee will not meet the administrative cost of the classification process	
5	Regulation 3: Ratings	Proposal for the Board to introduce another category of Not Suitable for Persons Under the Age 25 Years whereby instead of complete ban on some movies due to nature of content these can be accommodated here. A the age of 25 years someone is able to make more responsible decisions of his/her own life. Movies that have sensitive content can be accommodated here.	This is not adopted- Restriction of films is not based on age. The parameters of restriction are with regard to content that should not be distributed and exhibited within the Kenyan Jurisdiction. These parameters are provided for in the classifications guidelines as well as any other applicable law.	NAIROBI

	Second Schedule	Proposal to not charge for film classification prior to exhibition. It is a government service which can be catered for by tax payers.	This is not adopted. The proposed fees have been reduced to accommodate the industry. However the fees levied cover administrative and operational costs associated with the classification process.	
6	(i) Regulation 11(1); and (ii) Regulation 11(3)(a).	Proposal to change from "censorship" to "classification" in the title is necessary.	The proposal is welcome. However it is important to note that these are amendments to the existing regulations and not a repeal of the same. Therefore the name cannot change. The word censorship does not appear in the regulation.	ONLINE
	Regulation 11(3)(a)	Recommendation that KFCB builds clarity with regard to the application of Regulation 11(1); and (ii) Regulation 11(3)(a) by excluding OTT/VOD from these regulations	The reference is to the Regulations under the Act as opposed to the proposed Regulations.	
7	Title	Film Censorship: KFCB should change the words "Film Censorship" to "Film Classification". This change shall go hand in hand with the Govt Agency's actual name (i.e. The Kenya Film Classification Board) and in essence, it's core Mandate.	The proposal is welcome. However it is important to note that these are amendments to the existing regulations and not a repeal of the same. Therefore the name cannot change. The word censorship does not appear in the regulation.	ONLINE
8	Application of classification labels to films	Due to the challenges raised above, it is proposed that the draft Regulations be amended to expressly exclude its application to digital content providers, including OTT and VOD service providers.	This is not adopted. The law requires that classification labels are to be affixed. The physical affixing is not applicable to over the top and video on demand services. The "affixing"	ONLINE

			referenced shall be in the form of iconography	
9	Regulation 3: Ratings	The Regulations have no guidelines on what informs the different classifications from GE, PG13, 16 etc. These Guidelines should be made clear in the Act.	The classification ratings are provided for in Section 17 of the substantive Act.	ONLINE
10	Second schedule	Censorship/classification cost is high, upwards of 7,000 for a feature film	No proposal made as to the clause.	
11		A demonstration on how film makers will be exempted from classification fees.	The Films and Stage Plays Act prescribes that only educational documentaries approved by the Kenya Institute of Curriculum Development, films restricted for use in the medical profession and content produced by the Government for purposes of education or awareness on its development agenda and projects are exempted	KISUMU
12		A clarification on whether classification of films apply to both local and international film content.	Affirmative. The Films and Stage Plays Act, prescribes that, no film or class of film(whether local or international) shall be distributed, exhibited or broadcast either publicly or privately unless the Board has examined it and issued a certificate of approval	KISUMU

13		During holidays broadcasters air cartoon programs during the day but when schools are in session they bring in appropriate content, the Board should explain what can be done to ensure that this is constant.	The Board has no control over the Broadcasters programme lineup. However, Broadcasters have the responsibility to ensure that they air content classified by the Board for age suitability	KISUMU
		Inquiry on whether KFCB regulates broadcast content	Yes, The Films and Stage Plays Act, prescribes that, no film or class of film(whether local or international) shall be distributed, exhibited or broadcast either publicly or privately unless the Board has examined it and issued a certificate of approval	
15	Film Censorship Regulations	A proposal that the Board re-classify restricted films after 5 years	The Board can reclassify any restricted film at any given time it is submitted. However, the validity of the certificate of approval, once issued, is five years.	MOMBASA
16	Film Censorship Regulations	Proposal to reduce classification fee from the current proposal of 85 ksh. Per minute to ksh. 50.	It is not feasible to reduce the classification fees further due to the administrative costs of the classification process. This proposal is therefore not adopted.	MOMBASA
17	Classification Censorship Regulations	Proposal to remove the fee for trailer and poster.	Proposal is not adopted. It is not feasible to remove the fees due to the administrative costs of the classification process.	MOMBASA
18	Film Distributors and	Films exhibited during the just concluded Kenya National Drama and Film Festival (KNDFE) had not been classified.	This concern is noted and the appropriate action will be taken	MOMBASA

	Exhibitions Regulations	Clarification on how the Board ensures that school films such as those that were exhibited during KNDFE are child friendly provided that students are exempted from classification.	The exemptions are on fees and not classification. The students are exempted from paying the classification fees, but the content is still subjected to classification.	KISUMU
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ANNEX III: PICTORIALS

1. Mombasa



2. Kisumu



3. Embu



4. Nairobi



3. Comprehensive financial implications of the Regulations.

Implementation of the proposed set of Regulations are estimated to cost Kshs. 14,443,793.00 annually. This cost will be borne by the Board to among other things, enhance the capacity of the Film content classification staff and external examiners as well as configuration of the Technical Regulatory Management System classification module. Further, the costs will cater for stakeholder and public awareness coupled with continuous monitoring and inspection in order to enhance compliance with these regulations.

Film Censorship		
No.	Item	Amount
1	Staff Awareness Programme	2,156,000
2	System Configuration	2,500,000
3	Monitoring & Inspections	700,000
4	Public Sens. Programmes	565,310
5	Daily Subsistence Allowances	5,522,483
6	Co-opted Film Examiners Allowances	2,500,000
7	Internet Services	500,000
Total		14,443,793